SUPREME COURT, U. S.

No. 73-857

MAR 6 1974

In the Supreme Court of the United States

OCTOBER TERM, 1973

MELVIN L. MEDANSKY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a second jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on ten of eleven counts of mail fraud, in violation of 18 U.S.C. 1341. He was sentenced to concurrent terms of eighteen months' imprisonment on each count, with immediate eligibility for parole under 18 U.S.C. 4208(a)(2). He was also fined $5,000. The court of appeals affirmed (Pet. App.).

In this petition he claims that his trial constituted double jeopardy because, when the jury at his first trial reported itself helplessly deadlocked, the trial judge refused to inquire whether it had reached a partial verdict and instead declared a mistrial on all

eleven counts.[1] This claim was fully considered and properly rejected by the court of appeals in an opinion (Pet. App. 4-12) on which we rely.[2] As the court of appeals pointed out (Pet. App. 5, 11), the colloquy at the first trial between the trial judge and the foreman of the jury (Pet. App. 9-10) precludes any inference that the jury had reached a final verdict on any count.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK
Solicitor General.

MARCH 1974.

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[1]After his first trial petitioner filed a petition for a writ of mandamus to compel the trial judge either to dismiss the indictment or to hold a hearing for the purpose of inquiring of the jurors whether they had reached a verdict on any count. The petition was denied by the court of appeals and by this Court, 405 U.S. 986.

[2]Contrary to petitioner's contention (Pet. 14-15), the decision of the court of appeals does not conflict with *United States* v. *Kin Ping Cheung*, 485 F. 2d 689; *United States* v. *Walden*, 448 F. 2d 925 (C.A. 4); or *United States ex rel. Russo* v. *Superior Court of New Jersey*, 483 F. 2d 7 (C.A. 3). In the first two cases, trials were aborted while testimony was still being taken; in the last, the jury reported only that it had not as yet reached a verdict rather than, as in this case, that it was hopelessly deadlocked.